



February 11, 2005

## HOUSE BILL No. 1580

DIGEST OF HB 1580 (Updated February 8, 2005 12:52 pm - DI 103)

**Citations Affected:** IC 34-11; IC 36-8.

**Synopsis:** Employment absence for volunteer firefighters. Prohibits a private employer from disciplining an employee who is a volunteer firefighter or a member of a volunteer emergency medical services association for being late to work when the employee is responding to a fire or an emergency call. Authorizes a private employer to: (1) request proof that the employee was engaged in fire or emergency activity when absent; and (2) require the employee to notify the employer of the expected absence before the scheduled start time. Provides that an employer other than the state is not required to pay salary or wages for volunteer firefighting time away from employment, although other accrued benefit remuneration may be paid. Provides that an employer may designate an employee as an essential employee and reject the employee's notification of expected absence. Specifies that the agent of a public employer other than the state who has authorized an absence for volunteer firefighting purposes has not committed ghost employment. Makes a conforming change regarding the statute of limitations for an action brought by a volunteer firefighter against a political subdivision employer disciplined for being absent from employment while responding to an emergency.

**Effective:** July 1, 2005.

**Davis, Ayres, Bright, Adams T**

January 18, 2005, read first time and referred to Committee on Public Safety and Homeland Security.  
February 10, 2005, amended, reported — Do Pass.

HB 1580—LS 7327/DI 96+



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February 11, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1580

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 34-11-2-10.5 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. An action brought by a**  
4 **volunteer:**

5 (1) **firefighter; or**

6 (2) **member of a volunteer emergency medical services**  
7 **association connected with a unit of government as set forth**  
8 **in IC 16-31-5-1(6);**

9 **against the volunteer's political subdivision employer for being**  
10 **disciplined for being absent from employment while responding to**  
11 **an emergency must be commenced within one (1) year after the**  
12 **date of the disciplinary action, as provided in IC 36-8-12-10.5(e).**

13 SECTION 2. IC 36-8-12-2 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this  
15 chapter:

16 **"Employee" means a person in the service of another person**  
17 **under a written or implied contract of hire or apprenticeship.**

HB 1580—LS 7327/DI 96+



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**"Employer" means:**

- (1) a political subdivision;
- (2) an individual or the legal representative of a deceased individual;
- (3) a firm;
- (4) an association;
- (5) a limited liability company;
- (6) an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5(a); or
- (7) a corporation or its receiver or trustee;

that uses the services of another person for pay.

**"Essential employee" means an employee:**

- (1) who the employer has determined to be essential to the operation of the employer's daily enterprise; and
- (2) without whom the employer is likely to suffer economic injury as a result of the absence of the essential employee.

"Nominal compensation" means annual compensation of not more than twenty thousand dollars (\$20,000).

**"Public servant" has the meaning set forth in IC 35-41-1-24.**

"Responsible party" has the meaning set forth in IC 13-11-2-191(d).

"Volunteer fire department" means a department or association organized for the purpose of answering fire alarms, extinguishing fires, and providing other emergency services, the majority of members of which receive no compensation or nominal compensation for their services.

**"Volunteer firefighter" means a firefighter:**

- (1) who, as a result of a written application, has been elected or appointed to membership in a volunteer fire department;
- (2) who has executed a pledge to faithfully perform, with or without nominal compensation, the work related duties assigned and orders given to the firefighter by the chief of the volunteer fire department or an officer of the volunteer fire department, including orders or duties involving education and training as prescribed by the volunteer fire department or the state; and
- (3) whose name has been entered on a roster of volunteer firefighters that is kept by the volunteer fire department and that has been approved by the proper officers of the unit.

**"Volunteer member" means a member of a volunteer emergency medical services association connected with a unit as set forth in IC 16-31-5-1(6).**

SECTION 3. IC 36-8-12-10.5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10.5. (a) This section  
2 does not apply to an employee of the state subject to IC 4-15-10-7.

3 (b) This section applies to an employee of a political subdivision  
4 who:

5 (1) is a volunteer firefighter **or volunteer member**; and

6 (2) has notified the employee's employer in writing that the  
7 employee is a volunteer firefighter **or volunteer member**.

8 (c) The political subdivision employer may not discipline an  
9 employee:

10 (1) for being absent from employment by reason of responding to  
11 a fire or emergency call that was received before the time that the  
12 employee was to report to employment; or

13 (2) for leaving the employee's duty station to respond to a fire or  
14 an emergency call if the employee has secured authorization from  
15 the employee's supervisor to leave the duty station in response to  
16 a fire or an emergency call received after the employee has  
17 reported to work.

18 (d) The political subdivision employer may require an employee  
19 who has been absent from employment as set forth in subsection (c)(1)  
20 or (c)(2) to present a written statement from the fire chief or other  
21 officer in charge of the volunteer fire department, **or officer in charge**  
22 **of the volunteer emergency medical services association**, at the time  
23 of the absence indicating that the employee was engaged in emergency  
24 firefighting or emergency activity at the time of the absence.

25 (e) An employee who is disciplined by the employer in violation of  
26 subsection (c) may bring a civil action against the employer in the  
27 county of employment. In the action, the employee may seek the  
28 following:

29 (1) Payment of back wages.

30 (2) Reinstatement to the employee's former position.

31 (3) Fringe benefits wrongly denied or withdrawn.

32 (4) Seniority rights wrongly denied or withdrawn.

33 An action brought under this subsection must be filed within one (1)  
34 year after the date of the disciplinary action.

35 **(f) A public servant who permits or authorizes an employee of**  
36 **a political subdivision under the supervision of the public servant**  
37 **to be absent from employment as set forth in subsection (c) is not**  
38 **considered to have committed a violation of IC 35-44-2-4(b).**

39 SECTION 4. IC 36-8-12-10.7 IS ADDED TO THE INDIANA AS  
40 A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1,  
41 2005]: **Sec. 10.7. (a) This section applies to an employee of a private**  
42 **employer who:**

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- (1) is a volunteer firefighter or volunteer member; and  
 (2) has notified the employee's employer in writing that the employee is a volunteer firefighter or volunteer member.

(b) Except as provided in subsection (c), the employer may not discipline an employee:

- (1) for being absent from employment by reason of responding to a fire or emergency call that was received before the time that the employee was to report to employment; or  
 (2) for leaving the employee's duty station to respond to a fire or emergency call if the employee has secured authorization from the employee's supervisor to leave the duty station in response to a fire or an emergency call received after the employee has reported to work.

(c) After the employer has received the notice required under subsection (a)(2), the employer may reject the notification from the employee on the grounds that the employee is an essential employee to the employer. If the employer has rejected the notification of the employee:

- (1) subsection (b) does not apply to the employee; and  
 (2) the employee must promptly notify the:  
 (A) fire chief or other officer in charge of the volunteer fire department; or  
 (B) the officer in charge of the volunteer emergency medical services association;

of the rejection of the notice of the employee who is a volunteer firefighter or a volunteer member.

(d) The employer may require an employee who has been absent from employment as set forth in subsection (b) to present a written statement from the fire chief or other officer in charge of the volunteer fire department, or officer in charge of the emergency medical services association, at the time of the absence indicating that the employee was engaged in emergency firefighting or emergency activity at the time of the absence.

SECTION 5. IC 36-8-12-10.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10.9. (a) The employer may require an employee who will be absent from employment as set forth in:

- (1) section 10.5(c)(1); or  
 (2) section 10.7(b)(1);

of this chapter to notify the employer before the scheduled start

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1 time for the absence from employment to be excused by the  
2 employer.  
3 (b) The employer is not required to pay salary or wages to an  
4 employee who has been absent from employment as set forth in  
5 section 10.5(c) or 10.7(b) of this chapter for the time away from the  
6 employee's duty station. The employee may seek remuneration for  
7 the absence from employment by the use of:  
8 (1) vacation leave;  
9 (2) personal time; or  
10 (3) compensatory time off.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Safety and Homeland Security, to which was referred House Bill 1580, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 4, delete "volunteer firefighter against" and insert **"volunteer:**

**(1) firefighter; or**

**(2) member of a volunteer emergency medical services association connected with a unit of government as set forth in IC 16-31-5-1(6);**

**against".**

Page 1, line 4, delete "volunteer firefighter's" and insert **"volunteer's".**

Page 2, between lines 8 and 9, begin a new paragraph and insert:

**""Essential employee" means an employee:**

**(1) who the employer has determined to be essential to the operation of the employer's daily enterprise; and**

**(2) without whom the employer is likely to suffer economic injury as a result of the absence of the essential employee.".**

Page 2, between lines 10 and 11, begin a new paragraph and insert:

**""Public servant" has the meaning set forth in IC 35-41-1-24.".**

Page 2, between lines 28 and 29, begin a new paragraph and insert:

**""Volunteer member" means a member of a volunteer emergency medical services association connected with a unit as set forth in IC 16-31-5-1(6)."**

Page 2, line 34, delete ";" and insert **"or volunteer member;"**.

Page 2, line 36, delete "." and insert **"or volunteer member."**.

Page 3, line 8, after "department" insert **", or officer in charge of the volunteer emergency medical services association,"**.

Page 3, line 21, delete "As used in this subsection, "public servant" has the meaning".

Page 3, line 22, delete "set forth in IC 35-41-1-24.".

Page 3, run in lines 21 through 22.

Page 3, line 31, delete ";" and insert **"or volunteer member;"**.

Page 3, line 33, delete "." and insert **"or volunteer member."**.

Page 3, line 34, delete "The" and insert **"Except as provided in subsection (c), the"**.

Page 4, between lines 1 and 2, begin a new paragraph and insert:

**"(c) After the employer has received the notice required under subsection (a)(2), the employer may reject the notification from the employee on the grounds that the employee is an essential**

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employee to the employer. If the employer has rejected the notification of the employee:

(1) subsection (b) does not apply to the employee; and

(2) the employee must promptly notify the:

(A) fire chief or other officer in charge of the volunteer fire department; or

(B) the officer in charge of the volunteer emergency medical services association;

of the rejection of the notice of the employee who is a volunteer firefighter or a volunteer member."

Page 4, line 2, delete "(c)" and insert "(d)".

Page 4, line 5, after "department" insert ", or officer in charge of the emergency medical services association,".

and when so amended that said bill do pass.

(Reference is to HB 1580 as introduced.)

RUPPEL, Chair

Committee Vote: yeas 7, nays 1.

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